

RETURN TO:
BRIDGFORTH & BUNTIN
P. O. BOX 241
SOUTHAVEN, MS 38671
393-4450

BK0377PG0760

DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIONS

THIS DECLARATION made as of the 4th of April 2000, by ZP NO. 114, LLC, a Mississippi limited liability corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate ("Parcel I", "Parcel II", "Outlot I" and "Outlot II", respectively) situated in the City of Hernando, County of DeSOTO, and State of Mississippi more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Kroger Limited Partnership I ("Kroger") is the tenant of Parcel I under a Ground Lease entered into contemporaneously with this Declaration (the "Kroger Ground Lease"); and

WHEREAS, Parcels I and II are sometimes collectively referred to herein as the "Parcels" and individually as "Parcel"; and

WHEREAS, Outlots I and II are sometimes collectively referred to herein as the "Outlots" and individually as "Outlot"; and

WHEREAS, Declarant desires to enter into this instrument to provide for the integrated use of the Parcels and Outlots as a shopping center ("Shopping Center") in accordance with the plot plan ("Plot Plan") attached hereto as Exhibit "B" and made a part hereof.

NOW, THEREFORE, in consideration of the premises, Declarant does hereby grant and declare the following rights and servitudes over the Shopping Center:

ARTICLE I - DEFINITIONS

SECTION 1 The following terms shall be defined as set forth below:

Building Area: The area(s) of the Shopping Center designated on the Plot Plan for buildings.

Common Area: The improved area(s) of the Shopping Center not designated as Building Area on the Plot Plan.

ARTICLE II - EASEMENTS

SECTION 2.1 Declarant hereby establishes a non-exclusive easement over the Common

Area in favor of each Parcel and Outlot to permit unobstructed pedestrian and vehicular passage by the owner thereof and its agents, contractors, employees, tenants, licensees and invitees. Declarant hereby establishes a nonexclusive easement over the Common Area located on each Parcel and on Outlot I in favor of the other Parcel and Outlot I to permit parking by the owner thereof and its agents, contractors, employees, tenants, licensees and invitees in the designated parking spaces within said Common Area. Nothing herein shall prevent the Parcel I owner or its tenants or licensees from storing bascars on the Common Area of Parcel I or from selling merchandise on the Common Area portion of Parcel I shown on the Plot Plan. The area for selling merchandise in the Parcel I parking lot as shown on the Plot Plan is for temporary seasonal selling and may utilize a temporary structure such as a tent. The selling in this area may occur for no more than sixty (60) consecutive days no more frequently than three (3) times per year. Nothing herein shall prevent the exclusive use of any receiving area situated on a servient Parcel or Outlot by the owner thereof or its tenants or licensees.

SECTION 2.2 Declarant hereby establishes a non-exclusive easement over the Common Area in favor of each Parcel and Outlot to permit the construction, maintenance and use of all apparatus necessary to provide utility services to a Parcel or Outlot, including telephone, electricity, water, natural gas and storm and sanitary sewers, provided that same are constructed underground. Any disruption or demolition of a servient Parcel or Outlot by reason of the use of this easement shall be kept to a minimum and such area forthwith shall be restored by the dominant Parcel or Outlot owner to its original condition at no expense to the servient Parcel or Outlot owner.

SECTION 2.3 Declarant hereby establishes a non-exclusive easement over each Parcel and Outlot in favor of the other Parcel(s) or Outlot(s) to permit the temporary occupation of the servient Parcel or Outlot in order to facilitate the construction or maintenance of the improvements on the dominant Parcel or Outlot, provided that the use of this easement shall be kept to a minimum and shall not unreasonably interfere with the construction or operation of the improvements on the servient Parcel or Outlot, and further provided that this easement shall not permit the storage of materials or equipment on the servient Parcel or Outlot.

SECTION 2.4 Declarant hereby establishes an exclusive easement over the Outlots in favor of the Parcels to permit the construction, use and maintenance of sign(s) at the location(s) designated on the Plot Plan, including any electrical lines required to illuminate the sign(s), provided that all lines are constructed underground. Outlot I may construct a sign for its own use on the No Build Area shown on the Plot Plan.

SECTION 2.5 Declarant hereby further establishes a non-exclusive easement over each Parcel in favor of the other Parcel to permit any encroachment of building improvements from a Parcel onto an adjacent Parcel, provided that such encroachment cannot exceed the width of one linear foot. If a proposed encroachment by any building improvements on the dominant Parcel would require reconstruction of improvements on the servient Parcel, the dominant Parcel owner must obtain the approval by the servient Parcel owner of all plans and specifications covering such

must obtain the approval by the servient Parcel owner of all plans and specifications covering such encroachment and reconstruction, which approval shall not be unreasonably withheld, prior to commencement of construction of any building improvements on the dominant Parcel. The dominant Parcel owner, at its sole cost and expense, shall be responsible for any reconstruction, including structural reinforcement, of the building improvements on the servient Parcel(s) required by such an encroachment.

SECTION 2.6 The dominant Parcel or Outlot owner shall indemnify and save harmless the other Parcel or Outlot owners and their tenants and licensees from all claims, liens, damages and expenses, including reasonable attorneys' fees, arising out of its use of any of the easements established in this Article II.

SECTION 2.7 Nothing herein shall create a gift or dedication of any portion of the Shopping Center to the general public. Notwithstanding any other provision hereof to the contrary, each owner periodically may restrict ingress and egress on its Parcel or Outlot in order to prevent a prescriptive easement from arising by continued public use of same. Any restriction on ingress or egress shall be limited to the minimum time period necessary to prevent the creation of a prescriptive easement and shall occur at such times as to have minimum effect on the construction or operation of the Shopping Center.

SECTION 2.8 The owner of Parcel I and the owner of Parcel II grant an easement to the other for the purpose of construction of a common load bearing wall ("Common Wall") along the common property lines so that building improvements to be constructed on the respective Parcels will share such Common Wall as a structural support. The Common Wall shall be constructed by the first party desiring to construct improvements on its Parcel, in accordance with plans and specifications to be approved by both Parcel owners. No Parcel owner shall take any action which would weaken or place any additional load upon the Common Wall, except as provided in the approved plans and specifications. If the Common Wall should become destroyed or damaged, the respective Parcel owners shall share equally in the cost of repair or restoration, except in the case that a Parcel owner's building improvements are damaged and are not to be restored, in which event the restoring Parcel owner may construct a wall to bear the load of its building improvements only, and the entire cost thereof shall be borne by such restoring Parcel owner. In the event that the Parcel owners are unable to agree upon the plans and specifications for such Common Wall, this easement shall terminate, and in lieu thereof shall be substituted an appurtenant easement for foundation footer and minor wall encroachment, provided that such encroachment does not exceed one linear foot. The cost of any necessary structural reinforcement necessitated by reason of an encroachment shall be borne by the dominant Parcel owner.

ARTICLE III - MAINTENANCE & UPKEEP OF COMMON AREA

SECTION 3.1 Except as provided herein, each Outlot owner shall keep and maintain the Common Area on such owner's Outlot in good condition and repair. The Parcel II owner shall
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upkeep of the driveways and Shopping Center landscaping located on the Outlots, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include:

- (a) maintenance of paved surfaces in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality;
- (b) removal of all trash and debris and washing or sweeping as required;
- (c) removal of snow and ice from paved surfaces and sidewalks;
- (d) maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs as are reasonably required to effect the Plot Plan;
- (e) cleaning of lighting fixtures and relamping as needed;
- (f) restriping as required to keep same clearly visible;
- (g) maintenance of any electrical and storm water lines which exclusively provide service to the Common Area;
- (h) maintenance of all landscaping, but excluding installation and replacement; and
- (i) mowing and grooming of all seeded, sodded, grass or ground covered areas.

Any single proposed expenditure to be incurred by the repair or upkeep of the Common Area in excess of Five Thousand Dollars (\$5,000) during the initial lease term, and increasing by Five Thousand Dollars (\$5,000) every twenty (20) years thereafter, must be first approved by the Parcel I owner. If an owner disputes such an expenditure, it shall be obligated to perform, in a workmanlike, diligent and efficient manner, the repair or upkeep covered by the proposed expenditure and to bill the other owners in accordance with this Article III, provided that such owner first must notify the other owners of its intention to perform the work within fourteen (14) days after receipt of notice of the proposed expenditure, and further provided that the maximum cost which can be billed to the other owners cannot exceed the amount of the original proposed expenditure.

SECTION 3.2 Each Parcel and Outlot owner shall be obligated to pay its pro rata share of all reasonable expenses incurred for Common Area repair and upkeep of the driveways, entryways, and Shopping Center landscaping based on the ratio that the square footage of the Building Area on its Parcel or Outlot bears to the total square footage of the Building Area in the Shopping Center. Each Parcel Owner shall be obligated to pay its pro rata share of all other reasonable expenses incurred for Common Area repair and upkeep on the Parcels based on the ratio that the square footage of the Building Area on its Parcel bears to the total square footage of the Building Area on both Parcels, provided that an owner shall be released from liability for

payment of any expense not billed within one (1) year from the date that it was incurred by the Parcel II owner, and further provided that an owner shall have no obligation for such expenses until such time as its Parcel or Outlot is improved with new building improvements. The Parcel II owner shall bill ("Billing"), on a quarterly basis, the other owners for their pro rata share of all expenses incurred for Common Area repair and upkeep, provided that management fees, insurance, office overhead, equipment depreciation and similar expenses shall be excluded from the Billing.

The Billing shall itemize the expenses and shall state the calculations used to compute the sum assessed to each owner. The Parcel II owner, if requested, forthwith shall furnish written evidence of payment of an expense and shall make the records relating to the Common Area expenses available for audit during regular business hours. The other Parcel and Outlot owners shall reimburse the Parcel II owner for their respective pro rata share of expenses within thirty (30) days from the date of receipt of the Billing. In the event that an owner, disputes a billed expense, it shall notify the Parcel II owner, which notification shall state the reason for the dispute within said thirty (30) day period, but shall reimburse the owner of Parcel II for its pro rata share of all other non-disputed billed expenses. The failure to pay a disputed expense shall not constitute a default hereunder and shall not permit the Parcel II owner to enforce any of the remedies provided in Article VIII.

SECTION 3.3 Should the Parcel II owner fail to repair or maintain the Common Area, as set forth in Section 3.1 herein, any other owner or Kroger, for so long as Kroger may have any legal or equitable interest in a Parcel, shall be entitled but shall not be required to perform such obligations and to bill the other owners in accordance with this Article III or to deduct such costs from any sums owed to the Parcel II owner, provided that, except in the case of an emergency, such owner shall first notify the Parcel II owner of the default and shall permit same to perform the obligation within thirty (30) days after receipt of notice, and further provided that, except in the case of an emergency, it shall notify the other owners fourteen (14) days or more prior to performance of such obligation.

SECTION 3.4 The Parcel II owner shall indemnify and save harmless the other owners and their tenants and licensees from all claims, liens, damages, and expenses, including reasonable attorneys' fees, arising out of the repair or upkeep of the Common Area.

ARTICLE IV - LIABILITY INSURANCE

SECTION 4.1 The owner of each Parcel or Outlot shall maintain comprehensive general liability insurance, including contractual liability coverage, naming the other owners, and Kroger, for so long as Kroger may have a legal or equitable interest in a Parcel or Outlot, as additional insureds and providing coverage with a combined bodily injury, death and property damage limit of Two Million Dollars (\$2,000,000) or more per occurrence. An owner or its tenant having a net worth of Fifty Million Dollars (\$50,000,000) or more may self-insure this obligation. The owner of a Parcel or Outlot shall provide an owner or Kroger, whichever the case may be, with a

certificate of insurance or self-insurance, which certificate shall provide that the coverage referred to therein shall not be modified or canceled without at least thirty (30) days written notice to each named insured thereunder.

ARTICLE V - DAMAGE OR DESTRUCTION

SECTION 5.1 In the event that any part of the Common Area is destroyed or damaged by fire, casualty or force majeure, the owner of the affected Parcel or Outlot, at its sole cost and expense, forthwith shall clear and restore such area.

SECTION 5.2 In the event that any part of the Building Area on a Parcel or Outlot is damaged by fire, casualty or force majeure, the owner thereof shall not be obligated to restore same, provided that such owner, at its sole cost and expense, forthwith shall raze the damaged structures, remove all debris, shall pave such area for parking in general conformity with the parking layout shown on the Plot Plan and shall install adequate lighting and storm water drainage. Any area restored in this manner shall be maintained as though it were part of the Common Area until improved with building improvements, provided that such area where the building was previously located shall be maintained at the sole cost and expense of the owner of such Parcel or Outlot and provided such owner shall continue to pay its pro rata share of all reasonable expenses incurred for Common Area repair and upkeep on the same basis upon which it contributed prior to such damage or destruction.

SECTION 5.3 In the event that any part of the Common Area is condemned, the owner of the affected Parcel or Outlot, at its sole cost and expense, forthwith shall restore such area as much as practicable to provide the same approximate configuration, size, location and number of all parking lot light standards, driveways, walkways, parking spaces and curb cuts to adjacent roadways existing prior to the condemnation, revised as necessary to reflect the removal of the condemned area from the Shopping Center. Any award on account of a condemnation on the Common Area first shall be used in the restoration of same, and any claim to the award made by a Parcel or Outlot owner or its tenants or licensees hereunder shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" as used herein shall include all conveyances made in anticipation or lieu of an actual taking.

Nothing herein shall be construed to give any Parcel or Outlot owner an interest in any award or payment made to another Parcel or Outlot owner in connection with any exercise of the power of eminent domain or any transfer in lieu thereof affecting said other owner's Parcel or Outlot or giving the public or any government any rights in said Parcel or Outlot. In the event of any exercise of the power of eminent domain or transfer in lieu thereof of any part of the Common Area, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Area.

All other owners of the Common Area may file collateral claims with the condemning

authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner. Nothing in this Section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between such tenant and such owner for all or a portion of any such award or payment.

If there shall be any building improvements located on the condemned area, the owner of said condemned area shall, at its sole cost, risk and expense, and at its option, either restore the remainder of said building as much as practicable out of the same materials used for the original structure or shall raze the remainder of the condemned structure, shall remove all debris, shall pave the remaining area so razed for parking in general conformity with the parking layout shown on the Plot Plan, revised as necessary to reflect the removal of the condemned area from the Shopping Center, and shall install adequate lighting and storm water drainage. Any area restored in this manner shall be maintained as though it were part of the Common Area, provided that such area where the building was previously located shall be maintained at the sole cost and expense of the owner of such Parcel or Outlot, and such owner shall continue to pay its pro rata share of all reasonable expenses incurred for Common Area repair and upkeep on the same basis upon which it contributed prior to such condemnation.

ARTICLE VI RESTRICTIONS

SECTION 6.1 No portion of the Shopping Center, except Parcel I, shall be used as a drugstore or pharmacy department requiring the services of a registered pharmacist, provided that this restriction shall cease to be in force and effect if Parcel I is not used as a drugstore, and does not contain a pharmacy department, for a period of 365 consecutive days or longer subsequent to completion of building improvements constructed on Parcel I, except when such failure is caused by labor disputes, force majeure or conditions beyond the control of the occupant.

SECTION 6.2 No portion of the Shopping Center, except Parcel I, shall be used as a food store or food department, or for the sale of groceries, meats, fish, produce, dairy products, bakery products or any of them, for off-premises consumption, provided that nothing herein shall prevent any occupant of the Shopping Center from selling such products as an incidental part of its principal business so long as the total number of square feet of building area devoted to the display for the sale thereof does not exceed five percent (5%) of the total number of square feet of building area occupied by same or 500 square feet, including, in either case, one-half (1/2) of the aisle space adjacent any display area, whichever is smaller, and further provided that this restriction shall cease to be in force and effect if Parcel I is not used as a business for the sale of groceries, meat, fish, produce, dairy products, bakery goods or any of them, for off-premises consumption, for a period of 365 consecutive days or longer subsequent to completion of building improvements constructed on Parcel I, except when such failure is caused by labor disputes, force majeure or conditions beyond the control of the occupant. Notwithstanding anything to the contrary, a health or vitamin store, coffee shop, ice cream store, yogurt store, bagel shop and donut store are permitted uses in the Shopping Center.

SECTION 6.3 No part of the Shopping Center shall be used as a disco, nightclub, health spa, theater, bowling alley, skating rink or any other non-retail business which requires extensive parking or a business which principally features sexually explicit products or drug-related paraphernalia. This restriction shall cease to be in force and effect if Parcel I is not used as a business for the sale of groceries, meat, fish, produce, dairy products, bakery goods or any of them, for off-premises consumption, for a period of 365 consecutive days or longer subsequent to completion of building improvements constructed on the Parcel I, except when such failure is caused by labor disputes, force majeure or conditions beyond the control of the occupant.

SECTION 6.4 No greater than a total of 5,600 square feet (meaning any combination of bays that total 5,600 square feet) located no closer than 40' from the eastern most wall of the building on Parcel II as shown on the Plot Plan, shall be used as a sit-down restaurant, including deli, pizza or other similar meal serving establishments that have seating. No portion of the 140' of the eastern section of the building on Parcel II as shown on the Plot Plan shall be used for any business that utilizes delivery vehicles without approval of Kroger, so long as it has legal or equitable interest in Parcel I and further provided that this restriction shall cease to be in force and effect if Parcel I is not used as a business for the sale of groceries, meat, fish, produce, dairy products, bakery goods or any of them, for off-premises consumption, for a period of 365 consecutive days or longer subsequent to completion of building improvements constructed on Parcel I, except when such failure is caused by labor disputes, force majeure or conditions beyond the control of the occupant.

SECTION 6.5 All building improvements located in the Shopping Center shall be one story in height, with a maximum building height of 25 feet, except for signs and mezzanines and roof accent or height required by governmental authority due, to design conformity. Any other exception to said height restriction must be approved in writing by the owner of Parcel I and Kroger, for so long as Kroger may have any legal or equitable interest in a Parcel or Outlot, which approval shall not be unreasonably withheld or delayed.

SECTION 6.6 No portion of the Common Area shall be altered or improved with any buildings, provided that minor encroachment of buildings beyond said Common Area line shall be permitted so long as such encroachment does not exceed two (2) feet in depth, and further provided that (i) Outlot I may be improved with building improvements so long as the aggregate building area thereof does not exceed 10,000 square feet, the building improvements do not encroach within 80 feet of the southern property line of Outlot I as shown by crosshatching on Plot Plan (except that a structure for a single drive through window is a permissible in the 80 foot building setback), the parking space to building area ratio for such Outlot complies with the applicable building code and Section 6.7, and the maximum aggregate building width does not exceed 150 feet, excluding any drive through window, (ii) Outlot II may be improved with building improvements so long as the aggregate building area thereof does not exceed 4,000 square feet and the parking space to building area ratio for such Outlot complies with the applicable building code and Section 6.7 and (iii) no building improvements shall be constructed in

perimeter vehicular access drives used to service the rear of the buildings located on the servient premises or interfere with construction, maintenance or use of any fire exit doors so long as said fire exit doors are not closer than one hundred twenty-five (125) feet from said building limit line.

SECTION 6.7 All improvements situated on a Parcel shall have a parking space to building square footage ratio of 4.5:1000 or greater. Outlot I shall have a parking space to building square footage ratio of 5:1000 or greater. Outlot II shall have a parking space to building square footage ratio of 4.5:1000 or greater. The dimensions of each parking space shall conform to the requirements set forth on the Plot Plan.

SECTION 6.8 Subject to the provisions of Section 6.7, the owner of the affected Parcel shall be entitled to alter that portion of the Common Area on its Parcel crosshatched on Exhibit "B" attached hereto and made a part hereof or to improve such area with additional building improvements without the consent of the other owners or Kroger. Except as set forth in Section 6.6, the remainder of the Common Area shall not be altered or improved with additional building improvements without the consent of each owner, and Kroger, for so long as Kroger may have a legal or equitable interest in a Parcel, provided that nothing herein shall prevent a minor encroachment by building improvements on the Common Area or a minor alteration of the Common Area by the servient Parcel owner so long as such encroachment or alteration does not materially interfere with parking on or pedestrian or vehicular passage across the Common Area.

SECTION 6.9 (a) The Parcel I owner, Parcel II owner, the Outlot I owner and the Outlot II owner shall submit to the owner of Parcel II and Kroger, for so long as Kroger may have any legal or equitable interest in a Parcel or Outlot, exterior elevation, architectural and signage plans for all improvements to be constructed on its respective Parcel or Outlot in respect of the materials, design, location, construction or workmanship of any improvements on Parcel I, Parcel II, Outlot I and/or Outlot II. The Parcel I owner, Parcel II owner, the Outlot I owner and the Outlot II owner shall obtain the foregoing approvals before commencing any construction on its respective Parcel or Outlot, before implementing any changes in plans theretofore approved by the owner of Parcel II and Kroger, for so long as Kroger may have any legal or equitable interest in a Parcel or Outlot, and before commencing any construction to repair, replace or restore the improvements on its respective Parcel or Outlot following a condemnation, or a fire or casualty thereon.

(b) Each Parcel or Outlot owner shall perform construction on its Parcel or Outlot so as not to cause any unreasonable increase in the cost of construction of the remainder of the Shopping Center or any part thereof; unreasonably interfere with any other construction being performed on any other Parcel or Outlot; or unreasonably interfere with the operations conducted on any other Parcel or Outlot.

(c) Each Parcel or Outlot owner agrees that in the event any mechanic's lien or other statutory liens shall be filed against its Parcel or Outlot or any other Parcel or Outlot by reason of work, labor, services or materials supplied to or at the request of it pursuant to any construction

on its Parcel or Outlot, or supplied to or at the request of its tenant pursuant to any construction by said tenant, it shall pay and discharge the same of record within the earlier of ninety (90) days after the filing thereof, or thirty (30) days after receipt of a written request to discharge or bond over such lien from any Parcel or Outlot owner (the "Removal Period"), subject to the provisions of the following sentence. Each Parcel or Outlot owner shall have the right to contest the validity, amount or applicability of any such liens by appropriate legal proceedings, and, so long as it shall furnish bond or indemnify as hereinafter provided and be prosecuting such contest in good faith, the requirement that it pay and discharge such liens within said Removal Period shall not be applicable; provided, however, that in any event such Parcel or Outlot owner shall, within the Removal Period, bond or indemnify against such liens in amount and inform satisfactory to induce the title insurance company which insured title to the respective Parcels or Outlots to each of the Parcel or Outlot owners, to insure over such liens or to reissue and update its existing policy, binder or commitment without showing title exception by reason of such liens, and shall indemnify and save harmless the other Parcel or Outlot owners from all loss, damage, liability, expense or claim whatsoever (including reasonable attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceeding shall be finally concluded (so that no further appeal may be taken) adversely to the Parcel or Outlot owner contesting such liens, such Parcel or Outlot owner shall, within fifteen (15) days thereafter, cause the liens to be discharged of record.

SECTION 6.10 All electrical and telephone wires and all other utility lines serving Parcel II, and Outlots I and II shall be buried below grade such that the same shall not be visible.

SECTION 6.11 No fence, structure, landscaping, or other structure of any kind (except as may be specifically permitted herein and except landscaping that does not affect the visibility of the building on Parcel I from the right of way) shall be placed, kept, permitted or maintained upon the Common Areas of the Shopping Center without the prior written consent of the Parcel II owner and Kroger, for so long as Kroger may have a legal or equitable interest in a Parcel or Outlot.

SECTION 6.12 All lighting structures and standards erected in the Common Area of Parcels II, Outlots I and II shall be erected by and at the expense of the Parcel II owner, the Outlot I owner and Outlot II owner, respectively; shall be erected prior to commencement of business on each such Parcel or Outlot; and shall be located in such areas and in accordance with such plans and specifications as shall be approved by the Parcel II owner and Kroger, for so long as Kroger may have a legal or equitable interest in a Parcel or Outlot.

SECTION 6.13 Nothing herein shall require the owner of Parcel I to improve any portion thereof with building improvements or Common Area, to occupy Parcel I or to conduct a business in same.

SECTION 6.14 The remedies for breach of any of the restrictions set forth in this Article shall be cumulative, not exclusive, and shall include injunctive relief.

SECTION 6.15 No part of the Shopping Center, except that portion of Parcel I shown on the Plot Plan as the Fuel Station Premises or Outlot II if leased to Kroger, shall be used for the sale of automotive fuel, including without limitation gasoline and diesel fuels, provided that this restriction shall cease to be in force or effect if neither the Fuel Station Premises or Outlot II is used as a business for the sale of automotive fuel for three hundred sixty five (365) consecutive days or longer from and after the date of commencement of automotive fuel business operations thereon, except when such failure is caused by labor disputes, force majeure (including reconstruction as a result of a fire or other casualty) or conditions beyond the control of the occupant.

SECTION 6.16 No portion of the Common Area of the Shopping Center shall be used for on site storage of tractor trailer(s) or delivery vehicles.

SECTION 6.17 No portion of the area labeled as Future Retail, shown on the Plot Plan, to the south of the Kroger building, shall be used for a sit down restaurant or business that utilizes delivery vehicles, without the prior written consent of Kroger, for so long as Kroger may have any legal or equitable interest in a Parcel or Outlot. The Future Retail may have a drive through window if the structure or drive through lane traffic does not encroach within the 30 foot minimum driveway width.

ARTICLE VII - TAXES

SECTION 7.1 Each Parcel or Outlot owner shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively "Taxes") levied on its Parcel or Outlot and the improvements situated thereon.

SECTION 7.2 Each Parcel or Outlot owner may, at its own cost and expense by appropriate proceeding, contest the validity, applicability and/or the amount of any Taxes. Nothing in this Article shall require a Parcel or Outlot owner to pay any Taxes so long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the affected Parcel or Outlot to be forfeited to the imposer of such Taxes as a result of its nonpayment.

SECTION 7.3 If a Parcel or Outlot owner fails to comply with this Article, either the Parcel II owner or Kroger may pay the Taxes in question and shall be entitled to prompt reimbursement from the defaulting owner for the sums so expended with interest thereon at the rate provided in Section 8.2 hereof.

ARTICLE VIII - DEFAULT

SECTION 8.1 Should a Parcel or Outlot owner breach any of its obligations hereunder and such breach continue for a period of thirty (30) days after its receipt of written notice, any of

the other owners or Kroger shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owners and Kroger, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel or Outlot. All expenses incurred by the other owners to cure the defaulting owner's uncured breach pursuant to the preceding notice shall be reimbursed by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses.

SECTION 8.2 Any sums remaining unpaid in accordance with Article III or Section 8.1, together with interest calculated at the prime rate charged by CitiBank, N.A., New York, New York, or any successor thereto, or at the highest annual interest rate allowed by law, whichever is less, may be secured by a lien on the Parcel or Outlot of the owner in default and may be perfected in accordance with the laws of the State of Mississippi, which lien shall retain the original priority of title of this Declaration.

SECTION 8.3 In the event of litigation by reason of this Declaration, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees in addition to all other expenses incurred by such litigation.

SECTION 8.4 Kroger shall be a beneficiary of all of the rights and easements set forth herein and shall be entitled to enforce same for so long as Kroger may have any legal or equitable interest in a Parcel or Outlot.

ARTICLE IX - MISCELLANEOUS PROVISIONS

SECTION 9.1 No part of this Declaration may be terminated or modified without the prior consent of the owner of each Parcel or Outlot, and Kroger, for so long as Kroger has a legal or equitable interest in a Parcel or Outlot.

SECTION 9.2 This Declaration shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or Outlots or their tenants or licensees.

SECTION 9.3 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

SECTION 9.4 Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

SECTION 9.5 All notices and approvals required or permitted under this Declaration shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which

such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency. Should a Parcel or Outlot be subdivided by separate ownership, the party who owns the largest portion thereof is irrevocably appointed attorney-in-fact for all parties who may own an interest in the Parcel or Outlot to receive all notices and to render all approvals hereunder, which receipt of notices and delivery of approvals shall be binding on all such parties.

SECTION 9.6 All of the provisions hereof shall run with the land in perpetuity and shall be binding on the parties hereto and their respective successors and assigns.

SECTION 9.7 This Declaration contains the entire undertaking by the Declarant and there are no other terms, expressed or implied, except as contained herein.

IN WITNESS WHEREOF, the Declarant has executed this Declaration in four (4) counterparts, each of which constitutes an original instrument.

Witnesses for Landlord:

Nicholas J. Short
Danna D. Kille

ZP NO. 114, LLC,
a Mississippi limited liability company

By: Jeffrey L. Zimmer, LLC Administrator

Approved SSM (Corporate Acknowledgment)

STATE OF North Carolina
COUNTY OF New Hanover

This day, before me, a Notary Public of the State and County aforesaid, personally appeared Jeffrey L. Zimmer, LLC Administrator with whom I am personally acquainted and who upon oath acknowledged himself to be such LLC Administrator of ZP NO. 114, LLC, Landlord in the foregoing Lease, and that he as such LLC Administrator, being authorized to do so, executed the instrument for the purposes therein contained by signing in the name of the corporation as such officer.

Witness my hand and official seal this 5th day of April, 2000.
My commission expires:

My Commission Expires 7/15/2004

Marita Davis
Notary Public



CONSENT

Kroger Limited Partnership I, the tenant of Parcel I under a ground lease entered into contemporaneously with the foregoing Declaration, hereby consents to the Declaration.

KROGER LIMITED PARTNERSHIP I

By: Richard L. Sullivan

(Kroger Acknowledgment)

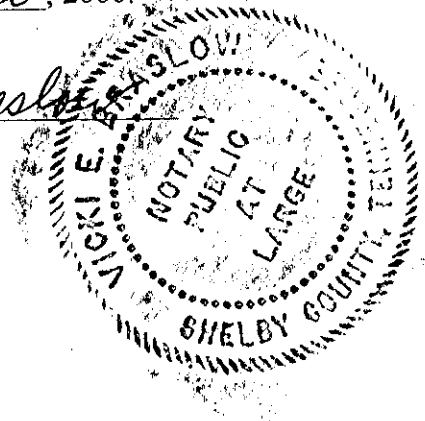
STATE OF TENNESSEE)
COUNTY OF SHELBY)

PERSONALLY came and appeared before me, the undersigned authority in and for the county and state aforesaid, the within named partnership, who acknowledged that he is General Partner of KRGP, Inc., an Ohio corporation, the general partner of Kroger Limited Partnership I, an Ohio limited partnership, and that for and on behalf of said corporation and said limited partnership and as the act and deed of each, he signed, executed and delivered the above and foregoing instrument, after first having been duly authorized by said limited partnership and by said corporation, in its capacity as general partner of said limited partnership, to do so.

WITNESS my hand and official seal of office on this the 4th day of April, 2000.

January 29, 2002
My Commission expires

Vicki E. Braslow
Notary Public



PARCEL 1

LEGAL DESCRIPTION OF A 7.13 ACRE PARCEL OF LAND BEING LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 7 WEST, AND IS FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 7 WEST; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 2583.20 FEET TO A POINT IN THE COMMERCE STREET RIGHT OF WAY; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 351.20 FEET TO A POINT IN THE NORTHEAST CORNER OF THE ROBERT D. ALLEN JR. PARCEL RECORDED IN DEED BOOK 286, PAGE 485; THENCE SOUTH 84 DEGREES 29 MINUTES 28 SECONDS WEST 325.30 FEET TO A 1/2" REBAR SET, SAID REBAR BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE SOUTH 84 DEGREES 29 MINUTES 28 SECONDS WEST 637.26 FEET TO A 1/2" REBAR SET; THENCE NORTH 84 DEGREES 27 MINUTES 25 SECONDS WEST 79.66 FEET TO FENCE RAIL FOUND; THENCE NORTH 65 DEGREES 14 MINUTES 25 SECONDS WEST 159.68 FEET TO A 3/8" REBAR FOUND; THENCE NORTH 27 DEGREES 03 MINUTES 44 SECONDS EAST 21.51 FEET TO A 5/8" IRON ROD FOUND; THENCE NORTH 51 DEGREES 39 MINUTES 24 SECONDS EAST 15.89 FEET TO A POINT; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 85.50 FEET, DELTA ANGLE 24 DEGREES 59 MINUTES 37 SECONDS, CHORD BEARING NORTH 25 DEGREES 50 MINUTES 47 SECONDS WEST, CHORD DISTANCE 37.00 FEET, AND A LENGTH OF 37.30 FEET TO A POINT; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 44.50 FEET, DELTA ANGLE 18 DEGREES 21 MINUTES 52 SECONDS, CHORD BEARING NORTH 22 DEGREES 31 MINUTES 54 SECONDS WEST, CHORD DISTANCE 14.20 FEET, AND A LENGTH OF 14.26 FEET TO A POINT; THENCE NORTH 58 DEGREES 17 MINUTES 10 SECONDS EAST 44.27 FEET TO A POINT; THENCE NORTH 79 DEGREES 16 MINUTES 45 SECONDS EAST 119.15 FEET TO A POINT; THENCE NORTH 08 DEGREES 29 MINUTES 56 SECONDS WEST 65.43 FEET TO A POINT; THENCE NORTH 86 DEGREES 29 MINUTES 41 SECONDS EAST 276.46 FEET TO A POINT; THENCE NORTH 33 DEGREES 30 MINUTES 19 SECONDS WEST 47.55 FEET TO A POINT; THENCE NORTH 86 DEGREES 29 MINUTES 11 SECONDS EAST 104.57 FEET TO A POINT; THENCE NORTH 03 DEGREES 36 MINUTES 08 SECONDS WEST 117.75 FEET TO A POINT; THENCE SOUTH 86 DEGREES 29 MINUTES 41 SECONDS WEST 478.95 FEET TO A POINT; THENCE SOUTH 71 DEGREES 05 MINUTES 23 SECONDS WEST 43.04 FEET TO A POINT; THENCE SOUTH 86 DEGREES 28 MINUTES 28 SECONDS WEST 188.13 FEET TO A POINT; THENCE NORTH 04 DEGREES 23 MINUTES 33 SECONDS WEST 56.59 FEET TO A 1/2" REBAR SET; THENCE NORTH 86 DEGREES 29 MINUTES 41 SECONDS EAST 1070.82 FEET TO A 1/2" REBAR SET; THENCE SOUTH 01 DEGREES 03 MINUTES 19 SECONDS EAST 446.54 FEET TO THE POINT OF BEGINNING CONTAINING 7.13, (310,592 sq. ft.), MORE OR LESS ACRES OF LAND BEING SUBJECT TO ALL CODES, REGULATIONS, REVISIONS, EASEMENTS, SUBDIVISION COVENANTS, AND RIGHTS OF WAY OF RECORD.

PARCEL 11

LEGAL DESCRIPTION OF A 2.18 ACRE PARCEL OF LAND BEING LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 7 WEST, AND IS FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 7 WEST; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 2583.20 FEET TO A POINT IN THE COMMERCE STREET RIGHT OF WAY; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 351.20 FEET TO A POINT IN THE NORTHEAST CORNER OF THE ROBERT D. ALLEN JR. PARCEL RECORDED IN DEED BOOK 286, PAGE 485; THENCE SOUTH 84 DEGREES 29 MINUTES 28 SECONDS WEST 425.60 FEET TO A 1/2" REBAR SET; THENCE SOUTH 84 DEGREES 29 MINUTES 28 SECONDS WEST 536.96 FEET TO A 1/2" REBAR SET; THENCE NORTH 84 DEGREES 27 MINUTES 25 SECONDS WEST 79.66 FEET TO FENCE RAIL FOUND; THENCE NORTH 65 DEGREES 14 MINUTES 25 SECONDS WEST 159.68 FEET TO A 3/8" REBAR FOUND; THENCE NORTH 27 DEGREES 03 MINUTES 44 SECONDS EAST 21.91 FEET TO A 5/8" IRON ROD FOUND; THENCE NORTH 51 DEGREES 39 MINUTES 24 SECONDS EAST 15.89 FEET TO A POINT; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 85.50 FEET, DELTA ANGLE 24 DEGREES 59 MINUTES 37 SECONDS, CHORD BEARING NORTH 25 DEGREES 50 MINUTES 47 SECONDS WEST, CHORD DISTANCE 37.00 FEET, AND A LENGTH OF 37.30 FEET TO A POINT; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 44.50 FEET, DELTA ANGLE 18 DEGREES 21 MINUTES 52 SECONDS, CHORD BEARING NORTH 22 DEGREES 31 MINUTES 54 SECONDS WEST, CHORD DISTANCE 14.20 FEET, AND A LENGTH OF 14.26 FEET TO A POINT, ALSO BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 58 DEGREES 17 MINUTES 10 SECONDS EAST 44.27 FEET TO A POINT; THENCE NORTH 79 DEGREES 16 MINUTES 45 SECONDS EAST 119.15 FEET TO A POINT; THENCE NORTH 08 DEGREES 29 MINUTES 56 SECONDS WEST 65.43 FEET TO A POINT; THENCE NORTH 86 DEGREES 29 MINUTES 41 SECONDS EAST 276.46 FEET TO A POINT; THENCE NORTH 33 DEGREES 30 MINUTES 19 SECONDS WEST 47.55 FEET TO A POINT; THENCE NORTH 86 DEGREES 29 MINUTES 11 SECONDS EAST 104.57 FEET TO A POINT; THENCE NORTH 03 DEGREES 36 MINUTES 08 SECONDS WEST 117.75 FEET TO A POINT; THENCE SOUTH 06 DEGREES 29 MINUTES 41 SECONDS WEST 478.95 FEET TO A POINT; THENCE SOUTH 71 DEGREES 05 MINUTES 23 SECONDS WEST 43.04 FEET TO A POINT; THENCE SOUTH 03 DEGREES 30 MINUTES 19 SECONDS EAST 34.73 FEET TO A POINT; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 44.50 FEET, DELTA ANGLE 41 DEGREES 51 MINUTES 11 SECONDS, CHORD BEARING SOUTH 17 DEGREES 25 MINUTES 17 SECONDS WEST, CHORD DISTANCE 31.79 FEET, AND A LENGTH OF 32.51 FEET TO A POINT; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, DELTA ANGLE 50 DEGREES 23 MINUTES 05 SECONDS, CHORD BEARING SOUTH 16 DEGREES 51 MINUTES 30 SECONDS WEST, CHORD DISTANCE 42.57 FEET, AND A LENGTH OF 43.97 FEET TO A POINT; THENCE SOUTH 07 DEGREES 08 MINUTES 29 SECONDS EAST 66.81 FEET TO A 1/2" REBAR SET; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 105.50 FEET, DELTA ANGLE 28 DEGREES 57 MINUTES 57 SECONDS, CHORD BEARING SOUTH 21 DEGREES 37 MINUTES 28 SECONDS EAST, CHORD DISTANCE 52.77 FEET, AND A LENGTH OF 53.34 FEET TO A POINT THENCE SOUTH 35 DEGREES 52 MINUTES 36 SECONDS EAST 32.48 FEET TO THE POINT OF BEGINNING CONTAINING 2.18, (95,142 sq. ft.), MORE OR LESS ACRES OF LAND BEING SUBJECT TO ALL CODES, REGULATIONS, REVISIONS, EASEMENTS, SUBDIVISION COVENANTS, AND RIGHTS OF WAY OF RECORD.

DATED APRIL 5, 2000 DIO

EXHIBIT "A"

OUT LOT 1

LEGAL DESCRIPTION OF A 1.25 ACRE PARCEL OF LAND BEING LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANG 7 WEST, AND IS FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 7 WEST; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 2583.20 FEET TO A POINT IN THE COMMERCE STREET RIGHT OF WAY; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 351.20 FEET TO A POINT IN THE NORTHEAST CORNER OF THE ROBERT D. ALLEN JR. PARCEL RECORDED IN DEED BOOK 286, PAGE 485; THENCE SOUTH 84 DEGREES 29 MINUTES 28 SECONDS WEST 862.26 FEET TO A 1/2" REBAR SET; THENCE NORTH 84 DEGREES 27 MINUTES 25 SECONDS WEST 79.66 FEET TO FENCE RAIL FOUND; THENCE NORTH 65 DEGREES 14 MINUTES 25 SECONDS WEST 159.68 FEET TO A 3/8" REBAR FOUND; THENCE NORTH 27 DEGREES 03 MINUTES 44 SECONDS EAST 21.51 FEET TO A 5/8" IRON ROD FOUND, SAID ROD BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 51 DEGREES 39 MINUTES 24 SECONDS 15.89 FEET TO A POINT; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 85.50 FEET, DELTA ANGLE 24 DEGREES 59 MINUTES 37 SECONDS, CHORD BEARING NORTH 25 DEGREES 50 MINUTES 47 SECONDS WEST, CHORD DISTANCE 37.00 FEET, AND A LENGTH OF 37.30 FEET TO A POINT; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 44.50 FEET, DELTA ANGLE 18 DEGREES 21 MINUTES 52 SECONDS, CHORD BEARING NORTH 22 DEGREES 31 MINUTES 54 SECONDS WEST, CHORD DISTANCE 14.20 FEET, AND A LENGTH OF 14.26 FEET TO A POINT; THENCE NORTH 35 DEGREES 52 MINUTES 36 SECONDS WEST 32.48 FEET TO A POINT; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 105.50 FEET, DELTA ANGLE 28 DEGREES 57 MINUTES 57 SECONDS, CHORD BEARING NORTH 21 DEGREES 37 MINUTES 28 SECONDS WEST, CHORD DISTANCE 52.77 FEET, AND A LENGTH OF 53.34 FEET TO A POINT; THENCE NORTH 07 DEGREES 08 MINUTES 29 SECONDS WEST 66.81 FEET TO A POINT; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, DELTA ANGLE 50 DEGREES 23 MINUTES 05 SECONDS, CHORD BEARING NORTH 16 DEGREES 51 MINUTES 30 SECONDS WEST, CHORD DISTANCE 42.57 FEET, AND A LENGTH OF 43.97 FEET TO A POINT; THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 44.50 FEET, DELTA ANGLE 41 DEGREES 51 MINUTES 11 SECONDS, CHORD BEARING NORTH 17 DEGREES 25 MINUTES 16 SECONDS EAST, CHORD DISTANCE 31.79 FEET, AND A LENGTH OF 32.51 FEET TO A POINT; THENCE NORTH 03 DEGREES 30 MINUTES 19 SECONDS WEST 34.73 FEET TO A POINT; THENCE SOUTH 86 DEGREES 28 MINUTES 28 SECONDS WEST 188.13 FEET TO A POINT; THENCE SOUTH 04 DEGREES 23 MINUTES 33 SECONDS WEST 303.52 FEET TO A POINT; THENCE NORTH 86 DEGREES 59 MINUTES 50 SECONDS EAST 200.96 FEET TO THE POINT OF BEGINNING CONTAINING 1.25, (54,389 sq. ft.), MORE OR LESS ACRES OF LAND BEING SUBJECT TO ALL CODES, REGULATIONS, REVISIONS, EASEMENTS, SUBDIVISION COVENANTS, AND RIGHTS OF WAY OF RECORD.

EXHIBIT "A"

Out Lot II

0.81, more or less, acre tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 18, Township 3 South, Range 7 West; Hernando, DeSoto County, Mississippi, and is further described as follows:

Commencing at the Southeast corner of the Northeast Quarter of Section 18, Township 3 South, Range 7 West; thence North 90°00'00" West 2538.20 feet to a point in Commerce Street (State Highway #304); thence North 00°00'00" West 351.20 feet to a point on the North line of the Robert D. Allen tract; thence 84°29'28" West 531.68 feet to a fence rail found at the Northwest corner of the McDonald's Corporation tract, also being the true point of beginning for the herein described tract; thence South 05°29'44" East 291.57 feet to a ½" rebar set on the North right of way line said Commerce Street; thence along said street South 82°15'43" West 119.85 feet to an iron pin found; thence North 05°29'06" West 296.36 feet to a fence rail found; thence North 84°29'28" West 119.82 feet to the point of beginning, containing 0.81, more or less, acres (35,283.6, more or less, square feet) of land, being subject to all codes, regulations, revisions, easements, subdivision covenants, and rights of way of record.

EXHIBIT "A"

